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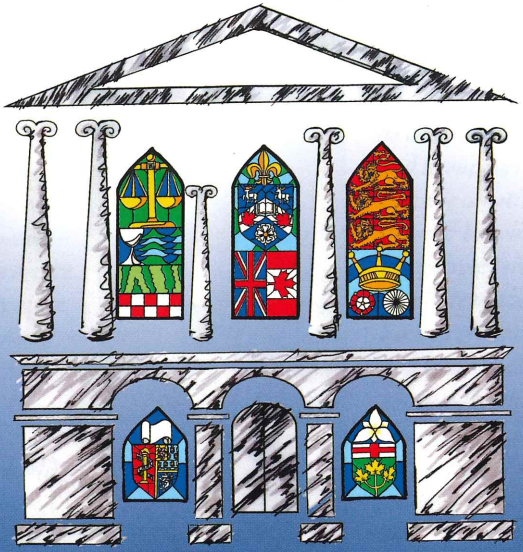


THE LAW SOCIETY
OF UPPER CANADA

1797 **200 yrs ans** 1997

LE BARREAU DU
HAUT-CANADA

CELEBRATIONS

A Word from the Treasurer

This year marks the 200th anniversary of the Law Society of Upper Canada, the governing body of the legal profession in Ontario. The Law Society, the largest of all Canadian law societies, was founded in 1797, almost 20 years before the earliest such association in any other province or territory. The creation of this self-governing body by an Act of the Legislative Assembly was an innovation in the English-speaking world and it became the model for law societies across Canada.

The reasons for the creation of the Law Society, as set out in the statute of 1797, were to provide the province with a "learned and honourable body, to assist their fellow subjects as occasion may require, and to support and maintain the constitution of the said Province." In concrete terms, the mandate of the Law Society of Upper Canada was to see that persons admitted to the legal profession were competent, and to ensure lawyers followed proper procedures and behaved ethically. These goals are still its justification for existence.

Please join us today as we celebrate two centuries of history. There will be highlights of the Society's rich past, musical performances, notable speakers and the unveiling of the Law Society postage stamp.

Susan E Elliott

Events of the Day

Order of Ceremonies
Simcoe Park, Niagara-on-the-Lake
Friday, May 23, 1997
2:15 p.m. - 4:00 p.m.

Foot and Carriage Procession from Queen's Landing Inn to Simcoe Park

1st Vignette from *Events & Characters Surrounding the Birth of the Law Society*

Welcome & Opening remarks by Law Society Treasurer, Susan Elliott

2nd Vignette from *Events & Characters Surrounding the Birth of the Law Society*

3rd Vignette from *Events & Characters Surrounding the Birth of the Law Society*

Musical Selections by the Lincoln & Welland Regimental Band

4th Vignette from *Events & Characters Surrounding the Birth of the Law Society*

Proclamation of Law Society Day by the Lord Mayor of Niagara-on-the-Lake, Michael M. Dietsch

5th Vignette from *Events & Characters Surrounding the Birth of the Law Society*

Remarks by the Chief Justice of Ontario, the Honourable R. Roy McMurtry

6th Vignette from *Events & Characters Surrounding the Birth of the Law Society*

O'Canada – Parliament Oaks School Children's Choir

Closing Remarks by Law Society Treasurer, Susan Elliott

Cake & Refreshments

Events and Characters Surrounding the Birth of the Law Society

Cast
In Order of Appearance

The Town Crier ..... Allan Freeman
John White ..... Guy Bannerman
Elizabeth Small ..... Gina Wilkinson
Robert Isaac Dey Gray ..... Greg Ellwand
John Small ..... Jonathan Tanner
Bartholomew Crannell Beardsley ..... Thomas Carey
James Clark ..... Robert Aaron
Nicholas Hagerman ..... James Wardlaw
Angus Macdonell ..... Paul Copeland
Allan McLean ..... Gerald Swaye, Q.C.
William Dummer Powell, Jr. ..... Michael Adams
Christopher Robinson ..... David Scott, Q.C.
Alexander Stewart ..... Gary Gottlieb, Q.C.

The crowd of bystanders Volunteers and staff of The Friends of Fort George

Production Team

Writer ..... Thomas Lackey
Director ..... Gregory J. Sinclair
Coordination ..... Erica Alexander and May Hum
Research ..... Elise Brunet, Ann-Marie Langlois and Susan Lewthwaite
Costumes ..... Malabar

Much of the historical information used for the writing of this play was supplied by the Law Society of Upper Canada Archives

Acknowledgements

The Law Society of Upper Canada greatfully acknowledges the contributions of those who have dedicated their time and talent to the success of today's events:

The Lord Mayor and the Town of Niagara-on-the-Lake for their welcoming hospitality.

The Friends of Fort George & Parks Canada, especially Erica Alexander for the countless hours of dedicated volunteerism.

The Lincoln and Welland Regimental Band playing with the kind permission of the Commanding Officer Lieutenant Colonel Jeff Cairns.

The Parliament Oaks School Children's Choir for providing us with the gift of song.

Carl Benn, Curator of Military History, Fort York for sharing his historical knowledge.

Christopher Moore, author of The Law Society of Upper Canada and Ontario's Lawyers 1797-1997, for his love of history and for sharing that passion with those who wove this performance together.

Sam Techner, Managing Director, Harcourts Limited Robemakers, for contributing his knowledge of 18th century costumes to today's performance.

The Law Society of Upper Canada Bicentennial Committee: Thomas Carey, chair and bencher members Nancy Backhouse, Denise Bellamy, Jane Harvey, P.B.C. Pepper, Heather Ross and James Wardlaw without whose dedication and creativity today would not have been possible.

To Law Society benchers: Thomas Carey, Robert Aaron, James Wardlaw, Paul Copeland, Gerald Swaye, Mike Adams, David Scott, and Gary Gottlieb for contributing their thespian talents to this performance.

The Play

Ladies and Gentlemen, we present for your entertainment some Events and Characters surrounding the Birth of the Law Society of Upper Canada as reenacted in six brief vignettes.

Introduction

1 John White is complaining to Mrs. Small about his dissatisfaction with legal life in Upper Canada. In particular, he resents having to be associated with the likes of his Solicitor General, whom he characterizes as an ill-bred, uneducated colonial not fit to practice law. He is especially unhappy with Gray's recent demand to share in the assizes fees. The nature of White and Mrs. Small's relationship is made clear.

The future of a profession

2 Robert Gray offers a counter-point to White's complaints, characterizing White and his kind as spoiled, pretentious and arrogant British barristers, who value birth and privilege over hard work, and who do not possess the depth of knowledge of the law they pretend to have. He complains they also lack the necessary tenacity of spirit and strength of character to succeed in the new world.

Youthful audacity

3 Gray confronts White with his demand to share in the assizes fees. This leads to a general discussion of the state of the legal profession in the province. Gray suggests that the two really have more in common than White is willing to admit and raises the idea of forming an association to better protect their mutual interests. White considers the idea.

Onset of a crisis

4 White recounts to Mrs. Small his experience that day at the founding meeting of the Law Society, and explains the rationale behind it. He also provides a rundown of the personalities of the other founding Benchers. White tells Mrs. Small that he has to end their affair due to the imminent arrival from England of his wife and family. She does not take this news well.

Confrontation and challenge

Small confronts White about offensive rumours that have been spread about his wife. White repeats his insults against his former mistress. Small "demands satisfaction" and challenges White to a duel.

Dénouement

The duel. After a suitable pause for dramatic effect, Gray considers the benefits of the newly formed Law Society both to the profession and the colony. He ends by inviting his fellow founding Benchers to introduce themselves.

The Characters

John White
Lawyer and officer holder, born circa 1761, in Middlesex, England.
John White was called to the bar in England in 1785. Unsuccessful as a barrister, he was considering becoming a clergyman when he was recommended as a suitable candidate for Attorney General of Upper Canada. White lived beyond his means and over the years he was involved in a number of squabbles with other office holders about sharing fees. His relationship with his wife, for whom he died, was less than idyllic and he had at least one other mistress with whom he had two daughters.

Elizabeth (Goldsmith) Small
Wife of John Small and one-time mistress of John White. Mrs. Small publicly snubbed the wife of her ex-lover, humiliating the couple socially. In retaliation, Mr. White questioned the validity of the Small's marriage and the morals of Mrs. Small in a letter to David William Smith. The letter ended up in the hands of the Chief Justice and eventually became public knowledge. This affront led to the duel depicted here.

Robert Isaac Dey Gray
Office holder, lawyer, judge and politician, born circa 1772, probably in New York. The son of a prominent Loyalist, he was licensed to practice by the legislature in 1794 and appointed Solicitor General by Lieutenant Governor Simcoe the next year. It is likely that he was instrumental in the creation of the Law Society, but it is clear that he saved it from collapse a few years later. He succeeded John White in the Treasurer's chair as well as assuming his responsibilities as Attorney General after White's death. Gray died in the wreck of the Speedy on Lake Ontario in 1804.

John Small
Office holder, Justice of the Peace and militia officer, baptized August 27, 1746 in Cirencester, England. John Small was a minor government official who owed his positions more to his contacts than to his efficiency. His wealth was built on land speculation. After being acquitted of murder charges after this duel, it took him and his wife several years to regain their social position. But by 1811 he was a trustee of the York District grammar school. One of his sons became a successful lawyer and politician. He died on 18 July 1831 in York (Toronto).

Bartholomew Crannell Beardsley
Lawyer, politician and judge, born October 21, 1775 in Poughkeepsie, N.Y. He studied law in Saint John, New Brunswick where he was called to the bar in 1796. He set up practice in Newark, Upper Canada the next spring and attended the founding meeting of the Law Society a few months later. Beardsley was known for his liberal ideas and was a close acquaintance of William Lyon Mackenzie. He died March 24, 1855 in Oakville, Ontario.

James Clark
Merchant, lawyer and office holder, probably born in Trois-Rivières, Québec. Clark and his brothers received a good education as young men and both James and his brother Peter settled down as merchants in Montreal and then Kingston. When Peter, who had been appointed Clerk of the Legislative Council, was killed in a duel, James inherited the position. Although James was known to be a conscientious employee, personal and financial problems ruined his health and led him to the bottle. There is no record of his whereabouts after he was replaced as Clerk of the Council.

Nicholas Hagerman
Hagerman was an American of Dutch descent. He was the first lawyer called in the county of Lennox and Addington where he remained the only legal practitioner for some time. His legal practice was rather relaxed with no regular business hours and he was present at only two more meetings of the Law Society. His son Christopher became a distinguished lawyer and judge and on many occasions father and son pleaded against one another.

Angus Macdonell
Macdonell was born in Invernesshire, Scotland. He was a prominent and active member of the legislature and had a successful legal practice. He is remembered both for his pressures to have York restored to its more popular name of Toronto and for his support of the culture of hemp. During his political career he crossed the path of at least two of the protagonists in our story: he contested a seat of the House of Assembly against both John Small and David William Smith. Like Gray, Macdonell died in the sinking of the Speedy in 1804.

Allan McLean
McLean was born in 1752 in Scotland. He appears to have led a very active life. Unable to make ends meet despite his busy legal practice, he always maintained commercial interests and held a variety of administrative posts. His zeal in attending Law Society meetings and every session of Parliament was remarkable and may explain his 20 years of political success. He died on October 8, 1847.

William Dummer Powell, Jr.
Powell was born in England in 1778. He was the son of William Dummer Powell, an early Chief Justice of the province. His career as a lawyer was uneventful, although things may have been different had he lived longer than his 25 years. The highlight of his short life was his runaway marriage which was one of the great romances of the early days of Upper Canada.

Christopher Robinson
Robinson was born in 1763 in Virginia. He became estranged from his family when he fought in the Revolutionary War on the British side. He moved to Upper Canada in 1792 and lived in Kingston, where he practised law. His attendance at the creation of the Law Society was also his last meeting with his fellow lawyers. He died in 1798 in Toronto, leaving several descendants that would make their mark on the legal profession in Ontario.

Alexander Stewart
Very little is known about Alexander Stewart besides the fact that he was a founding member of the Law Society. He had an active practice in the Court of King's Bench and regularly attended meetings of the Law Society.

Those Who Do Not Appear, but Nevertheless Play a Big Part in the Story

William Osgoode
Osgoode was born in London, England in 1754. He was admitted to Lincoln's Inn in 1779 and became the first Chief Justice of Upper Canada in 1792. Despite his short stay in Upper Canada – he left for Lower Canada in 1794 – he is credited, with Lieutenant-Governor Simcoe, with establishing the basis of Ontario's justice system. Osgoode Hall, in Toronto, the headquarters of the Law Society of Upper Canada, was named for him.

John Graves Simcoe
Simcoe was born in Cotterstock, England in 1752. Commander of the Queen's Ranger during the American Revolution, he was the first Lieutenant-Governor of Upper Canada, appointed in 1791. He was a staunch advocate of British values and institutions, which he endeavoured to introduce in Upper Canada. He died in England in 1806.

Marianne (Lynne) White
Mrs. White, of Essex, England married John White in 1784 and bore him two sons and a daughter. Their marital relations were strained and it took five years before she joined him in Upper Canada with their children. Their reconciliation was short-lived and she returned to England in 1799. A public insult directed to her by her husband's mistress, Elizabeth Small, led to the duel that killed him.

David William Smith
Army officer, officer holder and politician born September 4, 1764 in Salisbury, England. Smith started his career in the military. Although he articled with John White and was licensed as an attorney, he had no taste for legal matters and he accepted the post of Surveyor General of Upper Canada in 1798. Although there were rumours of his using his position to secure for himself the best land in the province, he was well respected. It is through Smith that the gossip about Mrs. Small became public.

Duels in Upper Canada

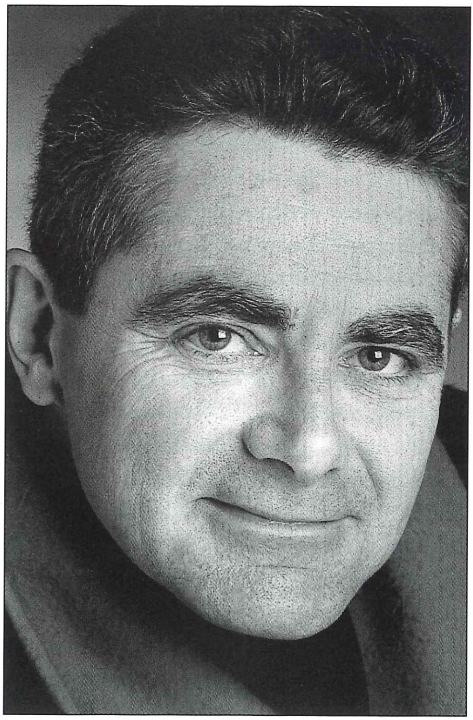
Duels were not uncommon in Upper Canada in the early 19th century. From 1793 to 1840, at least 24 challenges were issued. Duels, although illegal, were tolerated by the authorities, as long as they were conducted according to very precise "gentlemanly" rules.

The men who issued and accepted challenges were generally from the upper and middle class, white and from Anglo-American or British backgrounds. Many challenges were prompted by attacks on a woman's chastity or one's professional integrity, issues that undermined the social status of the family these men were supposed to protect and provide for. In some cases, more personal grudges were settled under the pretext of defending a fiancée's reputation. Because of their social standing and their involvement in potentially confrontational situations, such as politics, lawyers often took to settling disputes by duelling.

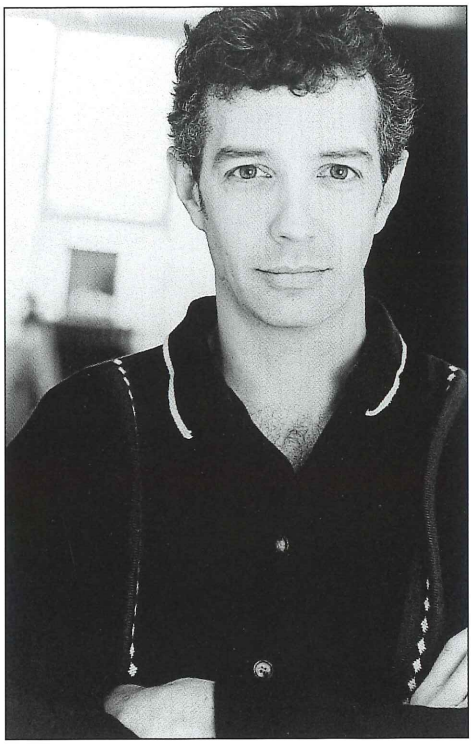
In some ways, the challenge was the most important part of the duel. Some duels concluded without pistols being fired or with the assailants firing in the air. A duel was to be stopped if one of the adversaries was hit. And if a person was mortally wounded, it was not rare for the dying man to absolve his killer. Under these rules, only a fourth of all duels ended with a wound or a death. Some were hit by accident, others because their opponent was not a "real" gentleman. In the case of a death, the person who fired would be brought to court. If the court was satisfied that the motive of the duel was legitimate and that the rules had been followed, the accused was generally acquitted. No Upper Canadian duellist was ever executed for killing his opponent, although some were convicted of manslaughter.

Guy Bannerman (John White)

Guy has been a member of the Shaw Festival company since 1986, appearing in *Peter Pan, St. Joan, The Front Page, Cavalcade* and last season's *Rashomon* and *The Simpleton of the Unexpected Isles*, among others. In 1997 he will be seen in *In Good King Charles's Golden Days* and *The Secret Life*. In Toronto in recent years he has appeared as Machiavelli in *Machiavelli in Love* for MCU Productions, in Jason Sherman's *Three in the Back, Two in the Head* at Tarragon Theatre, in Timothy Findley's *The Stillborn Lover* at Theatre Passe Muraille and in *Lost Innocence* for Kaeja d'Dance. As a director he has worked with Theatre Beyond Words, the University of Guelph and Dalhousie University. On television he has been seen on *Danger Bay, Judge, Street Legal, Side Effects* and in the miniseries *Love and Hate*. He is heard as the voice of Mr. Bear on the animated series *Rupert Bear*. His articles have appeared in *The Canadian Theatre Review*. Presently he can be heard in Mordecai Richler's *Solomon Gursky Was Here* on CBC Morningside.

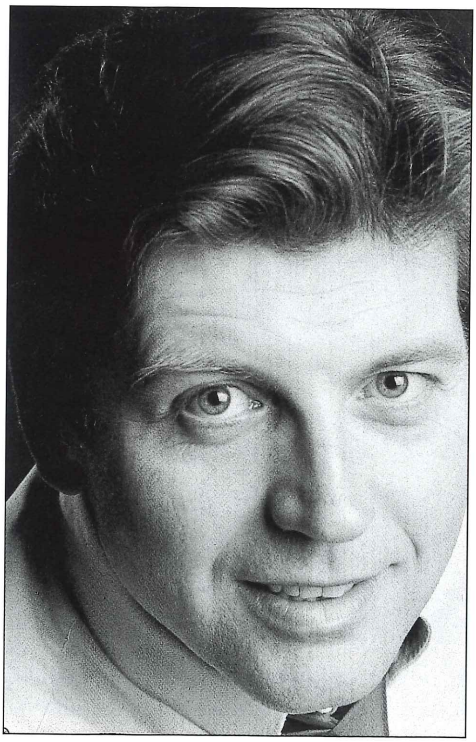


Jonathan Tanner (John Small)



Jonathan's credits include Gerald in *An Inspector Calls* and Elyot Chase in Noel Coward's *Private Lives* at the Sudbury Theatre Centre, Eddie in the Marti Maraden-directed production of Alan Ayckbourn's *Season's Greetings* at the Manitoba Theatre Centre, as well as Peter Fletcher in *Murder by the Book* at Theatre-on-the-Grand where he will return this summer to play Bob in another Ayckbourn play, *How the Other Half Loves*. He was most recently seen in Toronto as Feste in *Twelfth Night*, Oliver in *Talking It Over* and prior to that in *Gut Girls*, *Scenes from an Execution*, his one-man-show *P.O.W. (Prisoner of Words)* and two Geoff Kavanagh plays: *Canoe Lake* and the Chalmers Award-winning *Ditch*. Other fondly remembered roles include Bill in *Me and My Girl* at The Drayton Festival Theatre, Joey in *Road* at the Liberty Street Theatre and in Montreal; Stephano in *The Tempest*, Claudio in *Much Ado About Nothing* and at Théâtre du Nouveau Monde Rugby in *La Puce A L'Oreille*. Film credits include *Synapse* and *Waiting for Michelangelo*. Television credits include *The Mighty Jungle* and *Denise...Aujourd'hui*, as well as *Goosebumps*, *Dieppe* and *Missing Treasures*.

Greg Ellwand (Robert Isaac Dey Gray)
A Dora Mavor Moore award winner for his work on stage, Greg has starred in numerous theatre performances including the Canadian Stage Company's, *The Half of It* and *Colours in the Storm* at the Muskoka Festival. Greg has recently returned from Vancouver where he sang in the musical *Showboat*. His film credits include *Butterbox Babies* and *The Good Mother*. On television he has been seen in various episodes of *E.N.G.*, *Top Cops*, *Adderly* and *Lonesome Dove*. He has recently completed a movie of the week, *Killing Me Softly*, starring Eva Marie Saint and Richard Kiley. A graduate of the National Theatre School, Greg has completed more than 100 dramas and narrations for the Canadian Broadcasting Corporation.

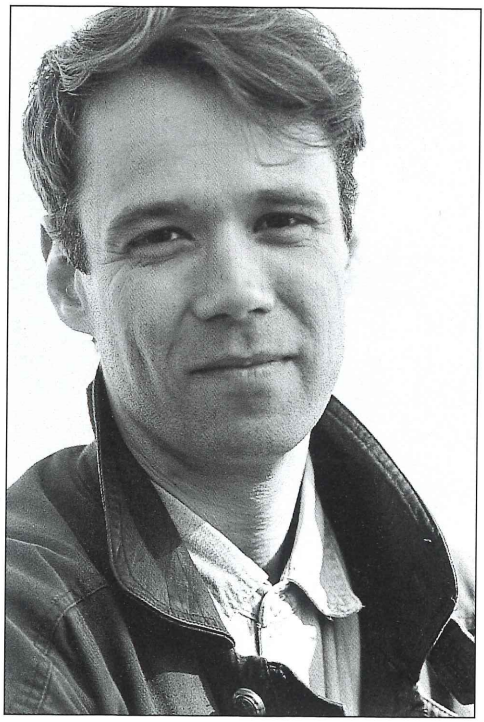


Gina Wilkinson (Elizabeth Small)

Most recently Gina directed the premiere of Michael MacLennan's *Grace* at the Belfry Theatre. As an actor, her theatre credits include Steve Martin's *Picasso at the Lapin Agile* at the National Arts Centre and the Manitoba Theatre Centre, *Death and the Maiden* at the National Arts Centre and the Belfry, *Gravity Calling* and *View from the Roof* at the Tarragon Theatre, *Into* at Passe Muraille, *Lips Together, Teeth Apart* as well as appearances at the Citadel, the Stratford Festival, Alberta Theatre Projects, Theatre News Brunswick, Theatre Calgary, the Factory Theatre and the Wintergarden. Her film and television credits include *Mia: Child of Hollywood, P.S.I. Factor, Forever Knight, Kung Fu, Kids in the Hall, E.N.G.,* and *Dracula: the Series.* Her visual art work can be seen in Ann Marie MacDonald's astonishing first novel, *Fall on Your Knees.*

Gregory J. Sinclair Capsule Biography

Gregory J. Scinclair is a director, producer and writer currently living in Toronto. As a Producer/Director working with CBC Radio Drama, he has created over sixty plays for radio, including, currently, a six part adaptation of Mordecai Richler's *Solomon Gursky was Here* for Morningside. His other productions range from dark science fiction to docudrama to delightful musicals for children. His projects have also received international distinction. His numerous international prizes include the Major Armstrong Prize, the Gabriel, two Actras and nine gold and silver medals from the International Radio Festival of New York. His production of *Mourning Cove,* a docudrama based on the case of Robert Latimer and starring R.H. Thomson, is CBC Radio's official entry for both Moscow's *Ostankino* and the *Prix Italia.* Gregory is also a filmmaker. *Paper Camera*, a film for children produced in collaboration with writer Thomas Lackey, has been broadcast by, among other, the CBC, the BBC, Nickelodeon and The Family Channel, and been honoured with a Cine Gold Eagle from the American Film Festival, a Silver Medal for Best Short Film at the New York Festival, The Chris at the Columbus Film Festival and top honours from the Association of Children and Television in Winnipeg in 1995.



Thomas Lackey

Thomas Lackey's writing career in fiction, non-fiction and drama spans more than twenty years with work published or produced in every major form including film, radio, television, stage and print. Tom has scripted historical dramas for the CBC, National Film Board and the Canadian Government. His current projects include a novel to be published by Somerville House, a six-part drama series for CBC Radio, and a feature-length screen play for an American production company. He wrote and co-produced with director Gregory J. Sinclair the multiple-award winning children's film *Paper Camera* which has been broadcast in all major television markets around the world and is currently in wide use in educational programs across North America.

Glossary

Advocate: One who assists with legal advice and pleads the cause of another in a judicial tribunal (such as a barrister or a solicitor).

Articling: Period of time when students are in the service of a practising lawyer. Articling has always been an important, though controversial, part of the education of law students in Ontario. Critics of the method question its usefulness as a teaching tool.

Assizes: A local sitting or session of the high court (by travelling judges) to try cases in the counties in which they arose. When travelling between district courthouse towns, the court was said to be "on circuit."

Attorney: Formal title for practitioners in the common law courts. The word "attorney" is no longer in use in Canada.

Attorney General: The Attorney General is the member of the legislature (there is also a federal Attorney General) responsible for the prosecution of criminal offenders and for advising the government on legal matters.

Bar: The word "bar" is a collective expression for members of the legal profession. When a person becomes a lawyer, he or she is "called to the bar."

Barrister: Generally used to refer to a lawyer who appears as an advocate in court. In Ontario, all those called to the bar are both barristers and solicitors, and the word "lawyer" includes both. "Barrister" is still used when referring to a person who specializes in court work. The term "litigation lawyer" also is used.

Barristers Roll: The list kept by the Law Society of Upper Canada of the names of all people who have ever been called to the bar in Ontario.

Bencher: A governor of the Law Society of Upper Canada, elected, appointed or ex officio, responsible for the regulation of the legal profession in Ontario.

Clerk: In John White's complaint, "clerk" refers to an officer of the court who accepts and produces documents, and keeps records. Gray was in fact the surrogate court registrar for the Eastern District before becoming District Court Judge for the Home District.

Circuit: The high court used to travel through the province to try cases in the counties in which they arose. When travelling between district courthouse towns, the court was said to be "on circuit."

Inner Temple: One of the four Inns of Court in London, England.

Inns of Court: The four Inns of Court in London, England – the Inner Temple, Middle Temple, Lincoln's Inn and Gray's Inn – are unincorporated voluntary associations with the exclusive right of call to the bar. In England, the legal profession is formally divided between barristers, who are called to the bar and belong to one of the Inns of Court, and solicitors, who belong to the Law Society.

Jurisprudence: In this case, the science and study of law and its structure. The word is often used to refer to previous decisions of the courts which, in combination with formal legislation, form the basis of our legal system.
King's (or Queen's) Bench: In existence between 1794 and 1913 in Ontario, the Court of Queen's Bench (or King's Bench, depending on the monarch on the throne at the time) had superior court jurisdiction in common law matters.
Lincoln's Inn: One of the four Inns of Court in London, England.

Solicitor: In Ontario, all lawyers are both barristers and solicitors. However, some specialize in certain branches of the law. A solicitor interviews clients, assembles material for litigation and researches legal precedents. A solicitor also performs many types of legal work, such as wills, real estate, corporate law and tax law.

Solicitor General: Minister responsible for overseeing law enforcement and public safety across the province. Today, the provincial Solicitor General is responsible for areas such as policing, emergency planning and fire prevention.

Treasurer: The Treasurer is the head of the Law Society of Upper Canada – its president. The title was borrowed from the English Inns of Court. Despite the title, the Treasurer does not handle financial matters directly.

Upper Canada: Upper Canada was the name for Ontario from 1792 to 1841. Upper is a reference to the St. Lawrence River: Ontario being upriver. The Law Society was created by an act of the Legislature while Ontario was still called Upper Canada. Its name can only be modified by changing the statute.